



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, January 18, 2022, at 7:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall- **Remote and in person Meeting**

Planning Board Members Present: Acting Chair Jeff Butensky (in-person), Robert Ceppi (in-person), and Shirley Shiver (in-person) Paul Gleason (in-person)

Planning Board Members Absent: None

Staff Present: Todd Miller, Town Planner (in-person) and Monica Santerre-Gervais, ODIS Senior Clerk (remote)

Staff Absent: None

1. Acting Chair, Mr. Butensky, opened the meeting at 7:00 pm.

2. Approval of Minutes: 12/21/2021 & 1/04/2022

- **12/21/2021**

MOTION: Ms. Shiver motioned to approve the minutes for 12/21/2021

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Ms. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

- **1/4/2022**

Mr. Butensky noted that on page 2, under item 5 it says “di” but should be “did.”

MOTION: Mr. Butensky motioned to approve the minutes for 1/4/2022 with the correction

SECOND: Ms. Shiver

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

3. ANR's

- **Paxton Road/ Diana Andrews/Mark Petruzzi/ Create New Lot**

Mr. Miller explained the ANR complies with ANR guidelines and there is a slice of land being taken from the westerly side to create a single-family home. Mr. Butensky stated the plan was hard to understand and not clear on what the applicant is doing. Mr. Ceppi explained the

narrative is missing information and not there is not enough frontage on the remaining lot. There was much discussion regarding ANR guidelines, creating an unbuildable lot, and additional information needed for the plan.

Diana Andrews, Paxton Road, explained both parcels are in her name, they are staying in her name, and the bank requested this step for her to build her house. Ms. Andrews did not believe there should be any issue with the remaining parcel being unbuildable.

Mr. Butensky explained the narrative was not clear. Ms. Shiver suggested the Planning Board to review the ANR application and revise it to be clearer to the applicants.

Mr. Ceppi motioned to deny the ANR because it is unclear on what the applicant is doing on the plan and the plan is unacceptable, but the motion was not carried.

Ms. Andrews explained she met the requirements on the ANR checklist.

MOTION: Ms. Shiver motioned to approve the ANR as submitted

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Shiver, Mr. Gleason all voted aye, and Mr. Ceppi voted nay the motion was carried (vote 3-1 motion carried)

4. Continued Public Hearing: Major Site Plan Review/ Special Permit/ Subdivision - Applicant: Spencer Solar LLC; Owner: Ash Spencer Realty LLC, Location: Ash Street; Spencer Assessor's Map R27-01. The applicant is requesting a Major Site Plan Review under Section 7.4 and Special Permit under Section 7.2 of the Spencer Zoning Bylaw Zoning to install a Solar PV Facility. The applicant is also seeking a Subdivision approval as part of this project. The property is located within the Rural Residential zoning district.

Mr. Miller explained that Attorney Jonathan Eichman from KP Law was on the call remotely to answer the Planning Boards questions. Mr. Butensky mentioned that with two members leaving the Planning Board there are now only two eligible members to vote on the application and understands they have two options. Option 1. They can deny the application or options 2. Readvertise and start over. Mr. Miller mentioned there is a vacant spot on the Planning Board and to vote it would need to be a 4 out of 5 members to vote yes. Mr. Butensky asked what happens when the application is readvertised, and Mr. Miller deferred to Mr. Eichman. Mr. Eichman explained that even if the two eligible members voted to approve it would still be denied. Mr. Eichman said an option would be to not close the hearing but request the applicant to submit a new notice and start from the beginning, however, would need to request in writing to approve to reopen and extend the deadline for decision for the site plan and special permit.

Steven Pikul, Bertin Engineering, and Thomas Recuperio, Recuperio Law, were remote to discuss the application. Mr. Recuperio clarified that the special permit and the site plan review were not as important as the subdivision and what is pending before the Planning Board is the subdivision application. Mr. Recuperio discussed how they have cooperated with the Planning Board and if they closed the hearing and/or denied it would affect the zoning freeze and cause the applicant to have to redesign the project. Mr. Recuperio stated they would be willing to consent the extension of time in

writing and agree to readvertise and notify abutters. Additionally, Mr. Recupero thought the Planning Board had a new member and back to a five-person board. Mr. Butensky mentioned they did have a fifth member, but she changed her mind. Mr. Miller said that he received the memo right before the meeting started.

Mr. Ceppi asked for clarification on the application following the amended solar bylaw and Mr. Miller said it is in a zoning freeze and the applicant will follow the old bylaw for solar. There was much discussion regarding the old and new solar bylaw, denying or continuing the application, and voting on the agenda items (special permit/site plan review & subdivision) separately.

The Chair opened the hearing up to the public and there were no comments or questions.

Mr. Recupero explained the length of the time this hearing has been ongoing for is not the fault of the applicant or the Planning Board and the applicant has complied with what the Planning Board has asked. Mr. Butensky said they could continue the meeting and Mr. Recupero said at the applicant's expense they will re-advertise and notify abutters.

Mr. Ceppi motioned to close the public hearing for the subdivision application for 133 Ash Street, there was not a second, and the motion was not carried.

MOTION 1: Ms. Shiver motioned to continue the subdivision, with written request from the applicant, until March 1, 2022

SECOND: Mr. Butensky

DISCUSSION: Mr. Eichman suggested an email from the applicant is needed to continue the subdivision.

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

Mr. Recupero asked the Planning Board not to deny the special permit and instead allow them to withdraw without prejudice.

MOTION 2: Mr. Ceppi motioned to close the public hearing for the special permit

SECOND: Mr. Butensky

DISCUSSION: Mr. Ceppi and Mr. Butensky were the only members eligible to vote

ROLL CALL VOTE: Mr. Butensky voted aye, Mr. Ceppi voted aye, and the motion was carried (vote 2-0 motion carried)

Mr. Recupero expressed if the two members vote to approve the application than it would be denied it will be appealed and it would put the applicant in a bad situation. Mr. Eichman said there is an option to accept a request to withdraw the application without prejudice, but the applicant would have to request that. Mr. Eichman said the filing and zoning freeze for the old solar bylaw is still in affect because the subdivision is still active. Mr. Recupero said they can't start over and have been working on this application for two years.

Jonathan Viner, 34 Donnelly Cross Road, called a point of order and asked if the motion to close the hearing failed because there was only two members that voted and technically it's a denial and the hearing is still open. Mr. Eichman replied that it was a procedural motion so it would go with a majority vote and passed.

MOTION 3: Mr. Butensky motioned to continue the special permit to February 1, 2022, to receive the request to withdrawal from the applicant.

SECOND: Mr. Ceppi

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

5. Continued Definitive Subdivision Plan: Applicant/Owner: Spencer Solar II LLC c/o Melink Solar Development, Location: Charlton Road (Bacon Hill Road); Spencer Assessor's Map R08- 10. The applicant is requesting a definitive subdivision approval under Article 2.3 (Definitive Subdivision Plans) of the Spencer Subdivision Regulations. The property is located within the Rural Residential zoning district.

Mr. Butensky mentioned this application was different from the last hearing because there are three eligible members to vote because Mr. Gleason satisfied the Mullins Rule.

Mr. Recupero stated this application has been difficult to discuss because BSC Group has not communicated with them since October 2021. Mr. Miller said he will reach out to BSC Group and see what the delay is.

The Chair opened the hearing up to the public and there were no comments or questions.

Mr. Recupero asked to have an extension until February 15, 2022, and he will provide a written request to Mr. Miller. Mr. Eichman suggested the request to go two weeks past the meeting date.

MOTION: Mr. Ceppi motioned to continue the Charlton/Bacon application, contingent upon written permission from the applicant, until February 15, 2022.

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and all voted aye, and the motion was carried (vote 3-0 motion carried, Ms. Shiver abstained)

*****5 Minute Recess*****

6. Major Site Plan Review/ Special Permit– Applicant: David Franca, Franca Services; Owner: Gregory Lano; Location: 0 Donnelly Road, Spencer Assessor's Map R35-25. The applicant is looking for a Major Site Plan Review under Section 7.4, and a Special Permit under Section 4.2 (A3 Multi Family in SR District) and 4.2.3 of the Spencer Zoning Bylaw to construct a multi-family housing development. The property is located within the suburban residential zoning district.

Mr. Miller mentioned there was a request to continue to February 1, 2022, by the applicant.

Mr. Ceppi felt at the first meeting it was determined that the application did not meet the zoning bylaw and they need to re-submit under the Open Space Residential Development (OSRD). Mr. Miller explained the application and that the Building Inspector agreed that it should be filed under OSRD or a subdivision. Ms. Shirley stated the OSRD is beneficial to the town. Mr. Butensky asked if the applicant was supplying a new plan and Mr. Miller was unsure.

MOTION: Mr. Gleason motioned to continue the hearing until February 1, 2022

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

7. Site Plan and Special Permit– Applicant/Owner: Joseph & Krystal Green, Location: 34 Brooks Pond Road, Spencer Assessor’s Map R51-18-1. The applicant is looking for a Special Permit under Section 6.2.5 (Common Driveways) to create a common driveway to serve the existing dwelling at 34 Brooks Pond Road and new proposed dwelling. The property is located within the Rural Residential zoning district.

Mr. Miller discussed the applicants request to have a common driveway, the applicant has supplied a drafted easement, the ANR plan passed at a previous meeting, and it has sufficient access.

Attorney Philip Stoddard, and Jason Dubois, DC Engineering, were present for the applicant. Mr. Stoddard explained this was a mother and father who would like their son and daughter-in-law to build a single-family home near them and share a common driveway. Mr. Stoddard said he provided and drafted an easement, and the ANR plan was approved 6 weeks ago.

Mr. Butensky mentioned there was a piece cut off on his plan. Mr. Dubois explained the easement and mentioned the house is the cut off piece but is further up. Mr. Ceppi felt the plan was insufficient and the bylaw requirements were not met such as cross sections, maintenance agreement, and having a second turnoff area. Mr. Stoddard stated the easement document mentions a maintenance agreement. Mr. Ceppi said he wanted to see past applications for common driveways so the Planning Board can be consistent. Mr. Dubois said he did two common driveways two years ago and he provided less information for the permits, but he can provide more information if the Planning Board needs it. Mr. Ceppi sighted the Zoning Bylaw sections 6.2.5 and read aloud the common driveway requirements. Mr. Butensky asked if the requirements are different for a current driveway and a new driveway and Mr. Miller said it was at the discretion of the Planning Board.

Mr. Stoddard mentioned there is a wetland issue and they are trying to avoid environmental impact by having the homes share a common driveway. Mr. Butensky suggested adding another turnaround at the top of the driveway and Mr. Dubois said he could. Mr. Ceppi said he wanted the applicant to meet the bylaw requirements. Mr. Dubois asked if he could get a waiver for the drainage because they are not creating a new driveway. Mr. Miller stated that waivers need to be

submitted in writing. There was much discussion about the driveway being gravel and not having water issues.

The Chair opened the hearing up to the public and there were no comments or questions.

Mr. Ceppi asked to review the submission of the common driveway for North Spencer Road. The Planning Board will continue until more information is provided.

MOTION: Ms. Shiver motioned to continue the SPR and Special Permit until February 1, 2022

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

Town Planner Report- Mr. Miller discussed residential solar provision for small ground mounted solar panels, fees, and to discuss at the next procedural meeting. Also, Mr. Miller and Mr. Butensky discussed the Housing Production Survey coming out soon.

8. Citizen Input

No comments or questions.

11. New Business/Adjournment

Mr. Butensky discussed the structure of the Planning Board and his willingness to stay as the Chairman and Vice Chair position. Mr. Ceppi stated he didn't mind being Vice Chair but does not have the time to do the policy research. Mr. Butensky discussed wanting to put the three solar projects with issues in a list and find a way to address the Planning Boards concerns. Ms. Shiver said they can do that at the next policy meeting and discuss asbuilts.

MOTION: Ms. Shiver motioned to nominate Jeff Butensky as Chairman and Robert Ceppi as Vice Chair.

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

Mr. Ceppi said recently the ANR plans have been unacceptable to him. ANR plans and concerns were discussed among the Planning Board the current ANR application and checklist will be reviewed and discussed at the next procedural meeting.

MOTION: Mr. Ceppi motioned to adjourn at 9:27 pm

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Mr. Ceppi, Mr. Gleason, and Mr. Shiver all voted aye, and the motion was carried (vote 4-0 motion carried)

**Submitted by Monica Santerre-Gervais, ODIS Clerk
Approved by the Planning Board on: 2/1/2022**

List of Documents used on January 18, 2022.

Items sent by email Planning Board or uploaded online prior to Meeting:

- Agenda
- Drafted minutes for 12/21/2021 & 1/04/2022
- ANR Application and Plans Paxton Road/ Diana Andrews/Mark Petruzzi/ Create New Lot
- Ash Street Solar- Special Permit /Major Site Plan Review, plans, narrative, and supporting documents
- Bacon/Charlton Solar Farm- Special Permit /Major Site Plan Review, plans, narrative, and supporting documents
- O Donnelly- Special Permit /Major Site Plan Review, plans, narrative, and supporting documents
- Continuance documentation for O Donnelly dated 1/14/2022
- 34 Brooks Pond Road- Special Permit / Site Plan Review, plans, application, and supporting documents

Items submitted/ brought to the Meeting:

- None